

# DEATH PENALTY

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

FILED

NOV 16 2006

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERK

CARROLL JOE PARR  
Petitioner

VS.

NATHANIEL QUARTERMAN,  
Director Texas Dept. of  
Criminal Justice  
Institutional Division  
Respondent

§  
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§

CAUSE NO. 06: 06-CV-317

DEATH PENALTY CASE

**FIRST AMENDED APPLICATION BY DEATH SENTENCED STATE INMATE  
FOR APPOINTMENT OF COUNSEL TO FILE FEDERAL HABEAS CORPUS  
WRIT APPLICATION; MOTION TO PROCEED IN FORMA PAUPERIS**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Comes now Carroll Joe Parr, #999479, sentenced to death by the State of Texas,  
and incarcerated on death row in the Polunsky Unit, Livingston, Texas, Texas  
Department of Criminal Justice, Institutional Division, applying to this Honorable Court  
for the appointment of counsel to investigate and file an Application for a Federal Writ of  
Habeas Corpus, and requesting that he be permitted to proceed in forma pauperis and  
would respectfully show as follows:

**I.**

**Jurisdiction**

This Court has jurisdiction over these matters pursuant to 28 U.S.C. §2241 et seq.;  
§2251, §2254 and 21 U.S.C. §848(q). This Application is being filed in accordance with  
the provisions of Article 11.071 §2(e), Texas Code of Criminal Procedure.

## **II.**

### **Background**

In March 2004 Mr. Parr was convicted of capital murder in the 54<sup>th</sup> Judicial District Court of McLennan County, Texas. The jury answered the special issues submitted pursuant to Art. 37.071 Texas Code of Criminal Procedure, and the convicting court set punishment at death. The Texas Court of Criminal Appeals affirmed Mr. Parr's conviction and sentence on direct appeal in an opinion delivered June 7, 2006 in No. 74,973.

On October 11, 2006 the Texas Court of Criminal Appeals denied Mr. Parr habeas corpus relief in an unpublished order. (Appendix "A").

## **III.**

### **Application for Appointment of Counsel and Motion for Leave to Proceed in Forma Pauperis**

Mr. Parr is a person in State custody under sentence of death who desires to pursue in Federal Court his remedy of seeking a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Mr. Parr has exhausted all remedies available in the Courts of the State of Texas. Mr. Parr has not previously filed an Application for Writ of Habeas Corpus in Federal Court. Mr. Parr invokes the provisions of 21 U.S.C. §848(q) to request the Court to appoint counsel to investigate his Federal Constitutional claims and to file an Application for Federal Habeas Corpus relief on his behalf.

Because of his financial inability to pay, Mr. Parr was represented by court appointed counsel during his trial, his direct appeal and his State Habeas Corpus proceedings. He is financially unable to pay the costs of this action or give security therefor.

#### IV.

##### **Request for "Other Counsel" to be Appointed**

Art. 11.071 § 2(e) V.A.C.C.P. provides, in pertinent part, that counsel other than state habeas counsel may be appointed to represent Applicant for purposes of federal habeas review. Mr. Parr respectfully requests that Mr. Don Vernay, attorney at law be appointed to represent him in federal court. Mr. Vernay has indicated he will accept the Court's appointment in this case.

Mr. Vernay is licensed to practice law in Texas. His Texas bar number is 24035581. He is admitted in the U.S. District Court Western District of Texas, the Fifth Circuit Court of Appeals and the Supreme Court of the United States. Currently he is counsel in five Texas capital post-conviction cases. He is qualified to represent Mr. Parr in this case. Mr. Vernay's resume is attached hereto as Appendix "B".

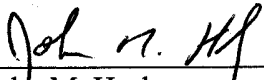
Don Vernay  
1604 Golf Course Road S. E.  
Rio Rancho, N. M. 87124  
Phone: (505) 892-2766  
e-mail: [vernay@cybermesa.com](mailto:vernay@cybermesa.com)

##### **Prayer for Relief**

Accordingly, Carroll Joe Parr respectfully requests the Court to:

- (a) Appoint Don Vernay, to investigate, research, file and present his federal habeas corpus claims;
- (b) Permit Carroll Joe Parr to proceed in forma pauperis.

Respectfully submitted,

  
\_\_\_\_\_  
John M. Hurley  
Texas State Bar No. 10311100  
427 N. 38<sup>th</sup> Street  
Waco, Texas 76710  
Tel: (254) 753-6161  
Fax: (254) 714-2564

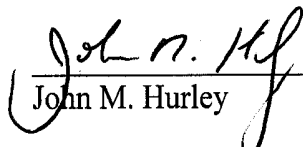
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served by  
first class U. S. mail on the following persons on this 15th day of November, 2006.

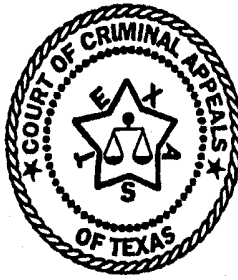
Gena Bunn  
Assistant Attorney General  
P. O. Box 12548  
Austin, Texas 78711-2548

Mr. Carroll Joe Parr  
Polunsky Unit  
#999479  
12002 FM 350 South  
Livingston, Texas 77351

Mr. Don Vernay  
Attorney at Law  
1604 Golf Course Road S.E.  
Rio Rancho, N. M. 87124

  
\_\_\_\_\_  
John M. Hurley

**APPENDIX "A"**



**IN THE COURT OF CRIMINAL APPEALS  
OF TEXAS**

**WR-65,443-01**

**EX PARTE CARROLL JOE PARR**

**ON APPLICATION FOR WRIT OF HABEAS CORPUS  
IN CAUSE NO. 2003-270-C FROM THE  
54<sup>TH</sup> DISTRICT COURT OF McLENNAN COUNTY**

*Per Curiam.*

**ORDER**

This is an application for writ of habeas corpus filed pursuant to Texas Code of Criminal Procedure, Article 11.071.

Applicant was convicted of capital murder on May 26, 2004. We affirmed the conviction and sentence. *Parr v. State*, AP-74,973 (Tex.Crim.App. June 7, 2006). On November 22, 2005, applicant timely filed this initial application for writ of habeas corpus pursuant to Article 11.071. Based on the application and the record before him, the judge of the convicting court proceeded without a hearing. After compliance with Article 11.071, Section 8, the judge of the convicting court entered findings of fact and conclusions of law.

We have reviewed the record in this case and we adopt the trial court's findings of fact. Based on our separate review and the findings of fact and conclusions of law entered by the judge of the convicting court, that are supported by the record, we find that applicant is not entitled to relief and this application for relief is denied.

IT IS SO ORDERED THIS THE 11<sup>TH</sup> DAY OF OCTOBER, 2006.

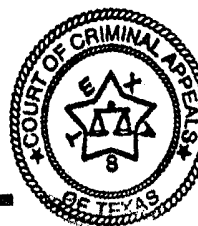
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A True Copy

Attest:  
Louise Pearson, Clerk  
Court of Criminal Appeals of Texas

By: \_\_\_\_\_

Deputy



**APPENDIX "B"**



Don Vernay  
1604 Golf Course Road SE  
Rio Rancho, NM 87124  
505-892-2766

### EDUCATION & TRAINING

B.A., *Magna Cum Laude*, 1971, Fairleigh Dickinson University, Teaneck, N.J.  
Academic Honors: Dean's List 1968-71

J.D., *With Honors*, 1974, Rutgers University School of Law, Newark, N.J.  
Academic Honors: Member, *Rutgers Law Review*, 1972-73;  
Administrative Editor, *Rutgers Law Review*, 1973-74

Diplomate, National Institute for Trial Advocacy, 1988

Numerous seminars in the areas of trial practice, criminal defense, forensics and capital litigation, including National Federal Habeas Corpus Seminar, August 2002, Nashville, TN; CACJ/CPDA Capital Case Seminar, February 2003-2005, Monterey, CA; NLADA/TCDLA Death Penalty Seminar, March 2003, Austin, TX; NACDL/TCDLA National Habeas College, San Antonio, TX, February 2004.

Member of National Association of Criminal Defense Lawyers, Montana Association of Criminal Defense Lawyers, New Mexico Association of Criminal Defense Lawyers and Texas Criminal Defense Lawyers Association.

Voted *Criminal Defense Lawyer of the Year 2002*, by the Montana Association of Criminal Defense Lawyers.

### PROFESSIONAL AND EMPLOYMENT EXPERIENCE 1986-2006

1986-2006: Solo practice of law with emphasis on trial, appellate and postconviction litigation in the area of criminal defense.

Admitted to practice before the Montana Supreme Court (1986), Texas Supreme Court (2002), New Mexico Supreme Court (2005), U.S. District Court for Montana (1986), U.S. District Courts for the Northern, Southern, Eastern and Western Districts of Texas (2003), Fifth Circuit Court of Appeals (2003), Ninth Circuit Court of Appeals (1986), and the United States Supreme Court (1996).

Flathead County, MT Contract Public Defender from 1989-1994 and 1999. Numerous felony jury trials and appeals in major felony cases, including homicide, death penalty, robbery and sexual abuse. Have litigated fourteen homicide cases since 1998, including seven capital cases (two at trial level and eight in postconviction), two juvenile homicides and five homicide trials.

Qualified to represent and have represented capital defendants at all stages of trial, appeal and postconviction death penalty litigation in both state and federal court. Currently involved in the litigation of five federal and one state capital habeas corpus cases in Texas and Montana.

Currently counsel in five Texas capital postconviction cases:

*Tercero v. Quarterman*, U.S. District Court, Southern District of Texas

*Morris v. Quarterman*, U.S. District Court, Southern District of Texas

*Alexander v. Quarterman*, U.S. Supreme Court, Certiorari Petition pending

*Martinez v. Quarterman*, 5<sup>th</sup> Circuit Court of Appeals, pending

*Ex Parte Westbrook*, Successor *Atkins* Petition in Harris County District Court

Have been retained and have provided testimony as an expert witness in trials and postconviction hearings pertaining to the effectiveness of legal counsel in the representation of clients in criminal proceedings at the pretrial and trial stages.

Faculty member at Center for American and International Law Capital Advocacy Program, Plano, TX (2003 - 2006).

Presenter at Texas Criminal Defense Lawyers Association Capital Litigation Seminars in South Padre Island, TX (2005-2006) and Dallas, TX (2006).